DEPARTMENT OF STATE REVENUE

Revenue Ruling #98-14 ST

October 23, 1998

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Sales/Use Tax – Transfer of Tangible Personal Property Pursuant to a Concurrent IRC Section 332 Liquidation and Merger

Authority: IC 6-2.5-10-2, Rule 45 IAC 1-1-44, IC 6-2.1-1-2, Rule 45 IAC 1-1-41

The taxpayer requests the Department to rule on the application of sales/use tax to the transfer of tangible personal property pursuant to a concurrent IRC Section 332 Liquidation and Merger.

STATEMENT OF FACTS

The taxpayer is engaged in the equipment rental business. The taxpayer currently conducts its equipment rental operations through several operating subsidiaries with locations in approximately 25 states. Currently, the corporate structure of the taxpayer consists of three tiers: (1st tier) the parent holding company; (2nd tier) two intermediate holding companies; and (3rd tier) the operating subsidiaries. Although the taxpayer's headquarters is located in Scottsdale, Arizona, one operating subsidiary of the taxpayer engages in operations in Indiana.

In order to form a more optimal and efficient corporate structure, the taxpayer wishes to collapse its operating subsidiaries and intermediate holding companies into a singular intermediate holding company by a concurrent IRC Section 332 liquidation and merger of the subsidiaries and the holding companies. The actual ownership interest by the taxpayer in the assets of the intermediate holding company will be the same prior to and subsequent to the liquidation and merger.

The following items of tangible personal property will be transferred from the taxpayer's operating subsidiaries:

1. Business assets such as furniture, fixtures, equipment and supplies;
2. Inventory and rental equipment; and
3. Motor vehicles (non-rental property).

DISCUSSION

IC 6-2.5-10-2 states that the provisions of the gross income tax law (IC 6-2.1) which do not conflict with the provisions of the sales/use tax law (IC 6-2.5) and which deal with certain named subjects, one of which is the determination of tax liability, apply for the purposes of imposing, collecting and administering sales/use tax. Rule 45 IAC 1-1-44, interpreting IC 6-2.1-1-2, is not in conflict with the provisions of the sales/use tax law and provides that a liquidation of a subsidiary corporation into its parent will be an exempt transaction for gross income tax purposes, pursuant to the following requirements, since the Department recognizes that the same ultimate results can be accomplished by a statutory merger (also, exempt from gross income tax as provided by Rule 45 IAC 1-1-41).

The requirements to be met are:

(A) The corporation receiving the property must own on the day of the adoption of the liquidation plan and continue to own until the receipt of the property at least eighty percent (80%) of the total number of shares of stock except non-voting stock limited and preferred as to dividends; and either

(B) The distribution is in complete cancellation or redemption of all the liquidating corporation's stock and the transfer of all the property occurs within the tax year; or

(C) The distribution is one of a series of distributions in a corporation with complete cancellation or redemption of all it stock in accordance with a plan of liquidation. The liquidation must be completed within three (3) years of the close of the taxable year in which the liquidating corporation made its first distribution under the plan.

In the instant case then, the tangible personal property transferred by the taxpayer's operating subsidiaries pursuant to a concurrent IRC Section 332 liquidation and merger will not be subject to sales/use tax to the extent the requirements of Rule 45 IAC 1-1-44 are satisfied.

RULING

The Department rules that the transfer of tangible personal property [furniture, fixtures, equipment, supplies, inventory, rental equipment and motor vehicles (non-rental property)] by the taxpayer's operating subsidiaries pursuant to a concurrent IRC Section 332 liquidation and merger will not be subject to sales/use tax provided the requirements listed in Rule 45 IAC 1-1-44 are satisfied.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in a statute, a regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

Department of State Revenue